

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JEREMY GLENN AHLUM, ET AL. :
 :
 vs. :
 :
 TOWN OF RIDGELAND, ET AL. : 9:10 CV 3227 SB

Motion hearing in the above matter held Thursday,
April 28, 2011, commencing at 10:49 a.m., before the
Hon. Sol Blatt, Jr., in the United States Courthouse,
Courtroom III, 81 Meeting Street, Charleston,
South Carolina, 29401.

APPEARANCES:

MARIO A. PACELLA, ESQUIRE and JOSEPH P. STROM,
JR., ESQUIRE, 2110 Beltline Blvd., Columbia,
SC, appeared for plaintiffs.

TIMOTHY A. DOMIN, ESQUIRE, 126 Seven Farms Dr.,
Charleston, SC, appeared for defendants.

MORGAN S. TEMPLETON, ESQUIRE, 145 King Street,
Charleston, SC, appeared for defendants.

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Official Court Reporter for the U.S. District Court
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1 THE COURT: Gentlemen, I've been over your briefs,
2 and I want to talk about standing, to start with; I think
3 that's the best thing to do. And I'd like to ask the
4 plaintiff, whoever is going to speak for the plaintiff, a
5 question. So who is going to handle the argument for the
6 plaintiff?

7 MR. PACELLA: Your Honor, I will.

8 THE COURT: All right. You've got three plaintiffs
9 who sent their money in, the bond money in, and didn't show
10 up, and, of course, the money was forfeited. And you've got
11 two who went down or had a lawyer go down, and their cases
12 were dismissed. And you've got three who asked for a jury
13 trial and proceeding through the state system.

14 MR. PACELLA: Yes, sir.

15 THE COURT: Now, if I were to determine -- I haven't
16 concluded this -- but if I were to determine that the three
17 who forfeited the bond had, in effect, pled guilty to a
18 violation of a traffic law, and that the two who the case were
19 dismissed don't have any constitutional claim, and that the
20 three who are proceeding in the state system, that I shouldn't
21 interfere with the state, and I should let them go up through
22 state system to the Supreme Court or wherever they wanted to
23 go, and then come into this court; if I held that, you
24 wouldn't have any plaintiffs.

25 Do you agree with that?

1 MR. PACELLA: I agree, Your Honor, if those were your
2 conclusions. I will dispute whether those conclusions are
3 appropriate, but that is correct. That would be a correct --
4 Correct, Your Honor.

5 THE COURT: So that's why I think that we need to get
6 the standing before we go into whether or not these different
7 causes of action have any merit or don't have any merit.

8 MR. PACELLA: Yes, sir.

9 THE COURT: So that's what I want to know.

10 Now, since the plaintiffs -- I mean the defendants have --
11 we're here on their motion -- Well, we're here on your motion
12 to amend your amended complaint, and we're here on the
13 defendants' motion to dismiss your complaint. I guess we
14 better get a complaint before any motion to dismiss can be
15 heard, because you've got to decide what the complaint is.

16 As I recall, you filed a complaint, then you filed -- they
17 moved to dismiss, and then you moved to amend your complaint.
18 And I think I'm right; before they moved to -- which they
19 moved to dismiss, but before they could move to dismiss, you
20 filed a motion to amend your amended complaint.

21 MR. PACELLA: Yes, sir. And the reason for that is
22 we received documents --

23 THE COURT: I mean, you didn't add any parties to --
24 the motion to amend your amended complaint only adds facts, as
25 I understand.

1 MR. PACELLA: That's correct.

2 THE COURT: Doesn't add any parties.

3 Well, normally, unless the amendment is futile -- I mean
4 at this stage of the proceedings I always -- normally I would
5 allow an amended complaint, because it's only a few months
6 old. However, if the amendments that you propose are futile,
7 then it wouldn't be any use to allow the amendments. And your
8 big amendment, as I read it, is your first amended complaint
9 where you add these parties. You only had three to start
10 with, didn't you?

11 MR. PACELLA: Yes, sir, then we added five additional
12 parties.

13 THE COURT: That was in your first amended complaint.

14 MR. PACELLA: Yes, sir.

15 THE COURT: You didn't add any parties in your motion
16 to amend your amended complaint.

17 MR. PACELLA: That is correct. At that point we were
18 moving to add additional facts that we discovered through a
19 Freedom of Information Act request.

20 THE COURT: Well, let's discuss these issues, since
21 you're moving to amend to make them parties. Let's discuss
22 these eight people in separate -- the three who forfeited
23 their bond, and the two who were dismissed and the three who
24 have asked for a jury trial and are waiting for the trial.

25 MR. PACELLA: Yes, sir.

1 THE COURT: Now, you tell me why your first three
2 don't fall into those who violated the traffic laws, and,
3 therefore, under the law, a forfeiture is the equivalent of a
4 guilty plea. And, of course, a guilty plea, you waive all
5 your rights. If they fall into that category, then they're
6 not proper parties. And you explain to me why they didn't
7 violate the traffic laws of South Carolina.

8 MR. PACELLA: Thank you, Your Honor. I think there
9 are basically two main arguments, two main reasons why these
10 aren't actually bond forfeitures within the context of South
11 Carolina law that would amount to a guilty conviction, or a
12 conviction that has guilt attached to it for a subsequent
13 civil proceeding.

14 The first reason is that we've alleged that they actually
15 haven't had a bond forfeiture proceeding in the Town of
16 Ridgeland. There was actually no proceeding, this is just
17 merely an entry in the court's docket system, and that the
18 case wasn't called on the record to determine if anyone
19 appeared to challenge that bond. So that's the first and main
20 point that we want to make is that there wasn't a bond
21 forfeiture proceeding. At least that's what we've alleged.
22 And the response filed by iTraffic in their motion to dismiss,
23 their documents that they filed were not transcripts of the
24 court proceedings, rather, docket entries that were made in
25 the computer system 7:00 o'clock at night, when the alleged

1 conclude from the record that they have, that this is
2 categorically a traffic offense.

3 So the two points --

4 THE COURT: Are you arguing that going anywhere from
5 11 to 15 miles over the speed limit on a public highway or
6 interstate is not a traffic offense?

7 MR. PACELLA: They were charged with careless
8 operation of a motor vehicle. Your Honor, if our clients were
9 charged with speeding under the South Carolina Code, the
10 analysis would be exactly what you just said, Your Honor. But
11 they didn't choose to charge them with the speeding violation
12 that is in the Traffic Code of South Carolina, of the South
13 Carolina Code; they chose this municipal ordinance, which is
14 more inclusive than just on the roadway.

15 And so from a pure factual matter, Your Honor, that may be
16 correct, but from a legal standpoint, this statute is -- this
17 ordinance is more inclusive than just the roadway. So our
18 point is the reason why each of these three individuals have
19 standing to bring an action at this time is because there was
20 no -- the Court did not have a bond forfeiture proceeding.
21 We've alleged that. And there's no evidence of an
22 on-the-record proceeding in court to determine guilt. Or to
23 determine that the bond was actually forfeited, that anyone
24 appeared, or anything that would constitute a prosecution in
25 the court.

1 And then the second argu --

2 THE COURT: Would they have to prosecute them if they
3 didn't show? I mean, what kind of prosecution would you have?

4 MR. PACELLA: Well, the prosecutor -- there has to be
5 an arm of the state to prosecute the action. The Municipal
6 Court itself cannot do the prosecution of the case. Because
7 there is a case, we actually have it cited in our briefing,
8 regarding a Newberry magistrate judge who was actually
9 prosecuting individuals. And the Court said you can't do
10 that. So there has to be a person for the state, in this case
11 an officer from the Town of Ridgeland, to be in the courtroom
12 when these bond forfeiture proceedings take place. And
13 there's no evidence that that actually took place.

14 THE COURT: All right, sir, go ahead.

15 MR. PACELLA: And we were talking about these three
16 plaintiffs. Plaintiff Emery, according to the documents that
17 iTraffic submitted in response -- or in their motion to
18 dismiss, is that his bond was paid a day after court. So he
19 would have had to have been tried in his absence, for that to
20 be a valid bond forfeiture proceeding. For his bond to be
21 forfeited, he would have had to have been tried in his
22 absence, and there's no record that plaintiff Emery was tried
23 in his absence.

24 THE COURT: Is there any record that any of the three
25 were tried in their absence?

1 MR. PACELLA: There is no record that there was a
2 trial in the absence for any of the parties.

3 THE COURT: Well, just those three.

4 MR. PACELLA: Right, right, that's right, for those
5 three. There's no -- any of those three parties. We haven't
6 moved on to any of the other parties, so that's what I'm
7 focusing on at this point.

8 THE COURT: And that's your position about why they
9 didn't violate -- why they don't come under the forfeiture
10 amounting to --

11 MR. PACELLA: Your Honor, the main argument is that
12 there was no forfeiture proceeding in court. That's the main
13 argument. Now, it may be simple as the traffic officer
14 reading the names of the tickets and verifying that no one has
15 appeared, and then for the judge to find bond forfeiture, have
16 a finding of a bond forfeiture, that may be as simple as the
17 proceeding needs to be. But it has to be some proceeding, not
18 just a clerk in the office making an entry in the computer
19 system.

20 THE COURT: Well, I mean, you admitted in the
21 complaint that a bond was posted.

22 MR. PACELLA: Yes, sir. Bond was posted, absolutely
23 correct.

24 THE COURT: All right, sir, let me hear from the
25 defendants about that. We'll just take them one at a time.

1 MR. PACELLA: Okay, thank you, sir.

2 MR. DOMIN: Your Honor, Tim Domin, I'm here on behalf
3 of the Town of Ridgeland, its police chief, Chief Woods,
4 and --

5 THE COURT: You represent everybody but the i
6 whatever it is?

7 MR. DOMIN: I Traffic, that's right. That's right.

8 Your Honor, under South Carolina law, if bond is put up,
9 there's no requirement to conduct a trial in absentia or
10 hearing in absentia. And that is South Carolina Code Section
11 56-5-2660. And what they want to seize on is that applies if
12 it's any traffic violation or traffic law of this state, or
13 political subdivision thereof, which is why they want to get
14 into the strained argument that somehow speeding on I-95 is
15 not a traffic violation. Clearly, that is a traffic
16 violation.

17 And I want to make certain that the Court understands how
18 strained this argument is. Of course, in one instance,
19 driving on I-95 clearly is operating on the roadways of this
20 state. There is no question about it. They want to suggest
21 that the Town of Ridgeland's ordinance is broader, because it
22 states that it is illegal to drive in a careless manner on the
23 public ways of the state.

24 Now, I'm not aware of any situation where Ridgeland's
25 applying that to railroad tracks, is applying that to driving

1 on bike paths or anything of the sort. That applies to
2 careless operation on the roadways.

3 Now, I will say to you, if somebody is drunk driving on
4 our sidewalks, I hope that that is also a violation of the
5 traffic laws of the state. I mean, I don't think that there's
6 any place for that.

7 And state law, state law talks about defining public ways.
8 That's where they get their definition from, is from the Motor
9 Vehicle Code, which says public ways include things like the
10 sidewalks and appurtenances thereof. And again, that makes a
11 lot of sense. Because we don't want people driving drunk on
12 the sidewalks. You don't want people committing traffic
13 offenses using their vehicle on the appurtenances to the
14 roadway. But to somehow turn this whole thing on its head and
15 suggest that those are not -- that the careless operation by
16 driving 81 miles an hour on I-95, that that's not a traffic
17 offense, turns the definition of traffic offense on its head.
18 And I just don't think that any reasonable interpretation can
19 support the view that careless operation of a motor vehicle is
20 not a traffic offense.

21 And, you know, all the municipalities here in South
22 Carolina have enacted these careless operation laws, because
23 it allows them to charge a fine, but the motorist doesn't have
24 points assessed against their driver's license. So by and
25 large, people who got charged with speeding are the ones who

1 would want to come in and ask for a careless operation. So
2 all the towns around here, all the towns in the state for the
3 most part have these careless operation of a motor vehicle
4 ordinances.

5 There is no question, and they're not raising the question
6 that we have the authority to enact that law. We have the
7 authority to enact that law. And the only question is, is
8 that a traffic offense; and clearly it is.

9 THE COURT: Well, they also raise the question that
10 there was no forfeiture proceeding. What's your position
11 about that?

12 MR. DOMIN: If you read South Carolina Code
13 56-5-2660, if a bond is put up, you're not required to try
14 them in absentia, you're not required to have further
15 proceedings. And under the Truesdale case, it's equivalent to
16 a guilty plea.

17 So it is true that certain proceedings would apply to
18 General Sessions offenses, certain bond forfeiture proceedings
19 and/or trials in absentia, that by state law do not apply to
20 traffic offenses. The only question is whether this is a
21 traffic offense. And with due respect, speeding on I-95 is a
22 traffic offense.

23 THE COURT: All right, sir. Have you got anything
24 else you want to --

25 MR. PACELLA: Well, Your Honor, I certainly think

1 it's valuable to realize that there are multiple doctrines
2 which prohibit these folks from relitigating their cases.
3 Res judicata, Heck versus Humphrey, as well as the
4 Rooker-Feldman Doctrine. All of those have been briefed.

5 And I think that Your Honor is keying in on the correct
6 issue. Because these folks who have pled guilty, their case
7 is over. And that is what they've done, they've pled guilty.
8 By putting a bond up, by South Carolina State law, they have
9 pled guilty. And if you plead guilty, you can't then come in
10 with a civil action and attack that guilty plea.

11 THE COURT: Well, how long did they have -- when did
12 the forfeiture change into a guilty plea?

13 MR. DOMIN: Well, under 56-5-2660, it says that the
14 Town is not allowed to set the ticket date any sooner than ten
15 days. Somebody is allowed to appear and voluntarily enter an
16 appearance and say I wish to waive that ten-day requirement.
17 But what the statute does say, if they've paid up their money
18 and so long as more than ten days have passed, that is a
19 forfeiture and a guilty plea for which the Town does not have
20 to conduct a trial. And it only applies to traffic offenses,
21 but it certainly applies to these offenses.

22 So to answer your question, I think it is on the time when
23 they put up the money and ten days has passed, that's when it
24 becomes a guilty plea.

25 THE COURT: All right, sir.

1 MR. TEMPLETON: Morning, Judge Blatt, Morgan
2 Templeton on behalf of iTraffic. I'll be very brief.

3 THE COURT: Take as long as you want.

4 MR. TEMPLETON: That's all right, Judge, I know we
5 have other issues to deal with, and I'll be very succinct. I
6 want to incorporate by reference Mr. Domin's arguments that he
7 has presented already to the Court, because they're equally
8 applicable to iTraffic.

9 The one other point that I would like to highlight for the
10 Court is that the one circuit-level court that has had an
11 opportunity to review this constitutional standing issue which
12 the Court is focusing on, is the Fifth Circuit. And we've
13 cited the two Bell decisions that really -- and they're in the
14 context of a photo traffic enforcement context. Those
15 decisions come down squarely on the side that folks that have
16 pled guilty or had their day in court with respect to their
17 traffic violation, the game is up. They have no
18 constitutional standing because there's been no injury.

19 The Tenth Circuit, in a different factual context, has
20 language in it that talks about activities that make criminal
21 activity more difficult, don't qualify as an injury-in-fact
22 for Article III standing purposes. And that's exactly what we
23 have here, Judge. These folks presumably violated the law,
24 they posted a bond, and under South Carolina state law, the
25 Truesdale case that Mr. Domin cited, that is tantamount to a

1 guilty plea. And so for the three folks that have posted
2 their bond, they had their opportunity to contest, chose not
3 to, and with due respect to those men, their day is up and
4 they need to live by the decision that they made, and can't
5 come to this Court to try to undo that which they voluntarily
6 chose to do. For the additional reasons that Mr. Domin cited,
7 the Heck versus Humphrey argument, under the -- and there's a
8 couple of cases cited in our brief in the RICO context, that
9 you can't take under the premise of a civil lawsuit, and
10 present facts that would necessarily impugn the validity of a
11 criminal conviction. You can't go through the back door, if
12 you can't walk through the front door. And that's what these
13 three are trying to do.

14 THE COURT: All right, sir.

15 MR. TEMPLETON: Thank you, Your Honor.

16 THE COURT: I'll be glad to hear from the plaintiff
17 or anything in reply.

18 MR. PACELLA: Your Honor, the traffic ticket which
19 is -- it's the second page of Exhibit A to each of our
20 versions of the complaint, each of the iterations of the
21 complaint actually tells a different --

22 THE COURT: Wait a minute now, let me get it.

23 MR. PACELLA: Yes, sir.

24 (Brief interruption in proceedings.)

25 THE COURT: All right, sir, I've got it now.

1 MR. PACELLA: There's several paragraphs. This is
2 actually very difficult to read in this document. But the
3 second-to-last paragraph on the right-hand side, the right
4 column states, "However, if you are not required to appear in
5 the court on the assigned trial date and have previously
6 posted bond --"

7 THE COURT: Wait a minute, let me see.

8 MR. PACELLA: Yes, sir.

9 THE COURT: Where are you reading from?

10 MR. PACELLA: The right-hand column, Your Honor.

11 THE COURT: Yes, sir.

12 MR. PACELLA: The second-to-last paragraph, begins
13 with however.

14 THE COURT: However. I see that.

15 MR. PACELLA: "-- if you are not required to appear
16 in court on the assigned trial date and have previously posted
17 bond and do not appear on the trial date, your bond may be
18 forfeited unless the judge has agreed to have your case heard
19 at --" I think that says another time.

20 So the ticket is actually saying there's going to be a
21 proceeding on that date even if you pay your bond. That's
22 what the ticket says.

23 THE COURT: Let's see again how -- Read that again
24 and tell me how you arrive at that conclusion.

25 MR. PACELLA: Yes, Your Honor. "However, if you are

1 not required to appear in court on the assigned trial date and
2 have previously posted bond and do not appear on the trial
3 date, your bond may be forfeited, unless the judge has agreed
4 to have your case heard at another time."

5 THE COURT: Well, and as to these three people, did
6 the judge agree to hear it at another time?

7 MR. PACELLA: That's not the point. That's not the
8 operative language in this paragraph, Your Honor. The
9 operative language is "and do not appear." Well, there has to
10 be a proceeding to determine if someone appeared on the
11 designated trial date, according to the ticket. And that's
12 our understanding of the South Carolina Code.

13 THE COURT: Do you contend that you appeared?

14 MR. PACELLA: Pardon?

15 THE COURT: Do you contend that you appeared?

16 MR. PACELLA: That our clients appeared? Your Honor,
17 that's not what we're contending. What we're contending is
18 there was no bond forfeiture proceeding; therefore, the bond
19 forfeiture doesn't constitute a guilty conviction which would
20 prevent them from litigating the matter here. That's what
21 we're contending.

22 THE COURT: They posted the bond and --

23 MR. PACELLA: Yes, sir.

24 THE COURT: -- this tells them that you may be
25 forfeited, the bond be forfeited unless the judge does

1 something, which wasn't done. And the time expired under
2 South Carolina law, the ten days.

3 MR. PACELLA: Or on the trial date.

4 THE COURT: Sir?

5 MR. PACELLA: It expires from the ten days or on the
6 trial date.

7 THE COURT: Well, I mean, I don't know what the trial
8 date was, but -- I don't know how long it was. But they
9 didn't do anything either within the ten days or within the
10 trial date. They didn't take any action. They posted their
11 bond, but they didn't do anything else.

12 MR. PACELLA: Your Honor, it is our contention that
13 there was no proceeding in court to have a bond forfeiture, as
14 required by South Carolina law.

15 THE COURT: Now, you're taking the position that
16 there's got to be a judge on the bench, and the police officer
17 or whoever is handling it for the Town has got to come in and
18 offer this ticket or whatever it is with the notice, and say
19 that this defendant has never appeared, and, therefore, we
20 move to have the bond forfeited?

21 MR. PACELLA: Your Honor, actually I'm making it even
22 simpler than that, Your Honor. I am arguing that they have to
23 have an officer in the courtroom, they have to read the roll
24 of the people who pay their bonds to ensure that no one is in
25 the courtroom.

1 THE COURT: Where do you get that kind of law from?

2 MR. PACELLA: Well, Your Honor, this is actually --
3 there is a court hearing that date. There has to be a
4 hearing, according to the ticket. And we have to -- where we
5 get that is this is a court of record and this is going to be
6 a determination of an adjudication of guilt.

7 THE COURT: Don't they tell them, if you don't show
8 up, your bond's going to be forfeited?

9 MR. PACELLA: That's right. They actually say that
10 in the ticket. They also say there's going to be a trial that
11 date.

12 THE COURT: No, where did they say trial?

13 MR. PACELLA: Well, if you don't appear on your
14 designated trial date.

15 THE COURT: If you don't appear in court -- Where do
16 you read --

17 MR. PACELLA: Same paragraph, Your Honor.

18 THE COURT: Yes, sir.

19 MR. PACELLA: "However, if you are not required to
20 appear in court on the assigned trial date and have previously
21 posted bond and do not appear on the trial date." So there's
22 an opportunity, you could pay your bond and go to court and
23 have a trial.

24 THE COURT: You can post your bond. You don't pay
25 it. It doesn't become paid unless you don't show up.

1 MR. PACELLA: That's correct terminology, Your Honor,
2 you post your bond, you go to court, and when they call your
3 case, you stand up and say I want a trial.

4 THE COURT: But if you don't do any of that. If you
5 don't go down there, you take the position that they've got
6 to -- what you're taking the position is they've got to call
7 your case, so to speak.

8 MR. PACELLA: Yes, sir.

9 THE COURT: And see if you're in court.

10 MR. PACELLA: Yes, sir.

11 THE COURT: The State against So-and-so, Town against
12 So-and-so, and see if that person is in court. If that person
13 isn't in court, they forfeit the bond; that's your position,
14 as I understand it.

15 MR. PACELLA: Yes, sir.

16 THE COURT: And if that person is in court and he
17 wants a trial, they give him a trial then. If he wants a jury
18 trial, they wait till they have a jury trial.

19 MR. PACELLA: Yes, sir.

20 THE COURT: But you take the position that they've
21 got to call his case, so to speak.

22 MR. PACELLA: Yes, sir.

23 THE COURT: And he can't forfeit his bond -- well,
24 you take the position -- does that mean then that he's got to
25 go -- if he doesn't show up, and they call his case, then they

1 can forfeit, they can forfeit his bond. But your position is
2 they've got to call his case.

3 MR. PACELLA: Yes, that is the position, Your Honor.
4 They have to call the case, and there could be a bond -- and
5 then when the case is called, if the person did not appear,
6 then the bond forfeiture -- then there could be a bond
7 forfeiture under the statute that's been cited by the
8 defendants.

9 THE COURT: And then you take the position that the
10 law requires, the notice requires that or the law requires
11 that, and that wasn't done.

12 MR. PACELLA: Sure, I mean, there's --

13 THE COURT: What happens then if the person just
14 doesn't do anything?

15 MR. PACELLA: Well, Your Honor, that's -- the point
16 of it is, what we're challenging is whether -- what we're
17 arguing is that if they don't have that bond forfeiture
18 proceeding, as simple as I've described it in open court, then
19 this payment of the ticket, the posting of the bond and the
20 subsequent keeping of the money by the Town, does not result
21 in a guilty conviction which would -- and then, therefore --

22 THE COURT: Which they waived all that.

23 MR. PACELLA: -- would include a civil suit. And
24 there's a case, Richland County --

25 THE COURT: Would preclude any kind of suit.

1 MR. PACELLA: That's correct.

2 THE COURT: All right, sir, I think I understand your
3 position. Let me hear what the defendants say about that
4 particular part of the argument.

5 MR. DOMIN: Calling the case is not required.
6 There's no law that says you have to call the case. Second,
7 none of these people allege that they showed up. None of
8 these people alleged that they said I'm here and I want to
9 have my trial.

10 Third, at every Municipal Court in the state there's some
11 process of figuring out who's there and who's not there. I
12 mean it may not be that they have to call every case, but
13 ultimately they determine who's there and who's not there.
14 These people not being there, paid their -- posted their bond,
15 and then ultimately forfeited the bond by virtue of them not
16 being there. There's no factual dispute. They were not
17 there. They don't have an opportunity then to say -- and we
18 think this is very consistent with Section 56-5-2660.

19 THE COURT: What does that section say?

20 MR. DOMIN: Essentially says you're not required to
21 conduct a trial in the event somebody posts a bond. If they
22 post bond --

23 THE COURT: I got all these sections; I'm not sure
24 where they are. Anyway, read me, what does this section
25 you're talking about say?

1 MR. DOMIN: I did not bring the exact -- I did not
2 bring the entire section, Your Honor. It refers to, Your
3 Honor, that the posting of a bond -- if it is a traffic case,
4 the posting of the bond does not then require there to be a
5 trial, in that you must provide at least the ten days, but
6 that after the ten days, that the bond may be forfeited. And
7 so under those circumstances, all the Municipal Courts and the
8 Magistrate's Courts, they don't have to call each case and try
9 it in absentia.

10 And the idea that they need to call the case and say is
11 so-and-so here, is so-and-so here, is so-and-so here, there's
12 no law that says that. There's no law that says they have to
13 go down the list of people who have forfeited bond, in order
14 to see that they're there. I mean, they're trying to impose a
15 requirement that no South Carolina case and no South Carolina
16 statute has, and that no Municipal Courts are doing.

17 THE COURT: Well, these people don't contend that
18 they ever went; these three people don't contend that they
19 ever showed up or anything.

20 MR. DOMIN: Right. If you look, what was their
21 intent, Judge? Obviously they paid their money, and under
22 South Carolina law, posting bond and not showing up,
23 constitutes a guilty plea. And to me, to suggest that they
24 can avoid that by saying that their name was not called out to
25 see if they were there, seems a bit counterintuitive, because

1 they're not claiming that they were there.

2 THE COURT: Okay. Thank you. Do you have anything
3 else you want to add?

4 MR. PACELLA: Not on that issue, Your Honor.

5 THE COURT: Okay, you got anything else?

6 MR. TEMPLETON: No, Your Honor, nothing further.

7 THE COURT: Now let's get then to the two who had --
8 they didn't appear themselves, but they had lawyers who
9 appeared and the case was dismissed. Now, what rights of
10 theirs have been violated? What constitutional rights.

11 MR. PACELLA: What constitutional rights have been
12 violated as to the specific individuals who --

13 THE COURT: The two.

14 MR. PACELLA: -- who have been dismissed, whose cases
15 were dismissed?

16 THE COURT: They go to court, they sent a lawyer to
17 court, they don't go themselves, they sent a lawyer to court.
18 And when he goes there, I don't know what happened, but
19 anyway, the charges were dismissed. I recall the patrolman
20 said there were two tickets or two individuals issued the same
21 ticket number or something like that; I've forgotten what it
22 was.

23 MR. PACELLA: Yeah, after about ten minutes of
24 argument, yes, then the officer ended up --

25 THE COURT: I don't know what happened on the other

1 one.

2 MR. PACELLA: And the other one, Your Honor, was
3 dismissed because the -- just dismissed before court started.
4 By the officer.

5 THE COURT: I see. Now, what rights have they got
6 that have been violated?

7 MR. PACELLA: Well, Your Honor, this is --
8 admittedly, this is not a custodial seizure, a Fourth
9 Amendment arrest, because there's no taking of my clients into
10 custody. But they were arrested. The ticket constitutes an
11 arrest. There's a noncustodial arrest. Which due process,
12 the Fourteenth Amendment due process of law does have --
13 provides some protections.

14 And the question is, does this conduct shock the
15 consciousness of the Court that would make that an
16 unconstitutional arrest that would give them rights under the
17 Fourteenth Amendment.

18 THE COURT: Your position is that under the
19 Fourteenth Amendment it's got to -- and the Fourth -- it's got
20 shock the conscience of the Court, sending them a traffic
21 ticket?

22 MR. PACELLA: Your Honor, actually I think it's a
23 little more involved than that. And I think this goes really
24 to the heart of our case and goes to the heart of what we're
25 contesting. These are municipal officers, Your Honor, they

1 have limited jurisdiction, limited territorial jurisdiction to
2 the municipality. There is a South Carolina case that extends
3 that within three miles for hot pursue and for offenses
4 committed in their presence. It does not give them
5 jurisdiction to make an arrest and effect an arrest out of
6 their jurisdiction.

7 We have a statute, South Carolina Code 5-7-110, which lays
8 out the jurisdiction. There's some exceptions when there's a
9 contract with another jurisdiction, hot pursuit within
10 three miles, or in the investigation in another jurisdiction
11 with an agreement with law enforcement in that other
12 jurisdiction.

13 There are three cases. State versus Morris, State versus
14 McAteer, and then a month ago, month and a half ago,
15 March 14th, 2011, State versus Boswell, that essentially just
16 says exactly that, you can't go outside of your jurisdiction
17 to make an arrest. That's what they're doing. And they're
18 doing it knowing that this statute was in place. These cases
19 came out -- first one came out in '89, that's the Harris case;
20 McAteer came out in 2000. Then they're continuing to do it
21 after State versus Boswell. The officers are exceeding their
22 jurisdiction. And that's not the only problem here, although
23 that is the heart of the problem, that the officers are going
24 beyond their jurisdiction.

25 We have alleged that the officer doesn't even write the

1 ticket. That's being taken -- that's being done by iTraffic,
2 by the private company. The officer doesn't make the
3 determination of probable cause. That determination is also
4 made by iTraffic. The officer doesn't serve the ticket --

5 THE COURT: You don't deny there was probable cause,
6 because you don't admit they -- you don't contest that they
7 were speeding. I mean, I haven't seen any denial that the
8 people weren't violating the law. I mean, is there any of the
9 plaintiffs come in and said -- I haven't seen any of them say
10 I wasn't going 81, I wasn't going 85.

11 MR. PACELLA: Actually, Your Honor, that is in the
12 pleadings, Mr. Leebrecht (phonetic) has alleged that it's not
13 even him. He's not the one of the two that you're focusing on
14 at this point, but he's one of the ones that asked for a jury
15 trial. It's not even -- he's alleged it's not even him.

16 THE COURT: I know, we'll get to the jury trial
17 people later.

18 MR. PACELLA: Right.

19 THE COURT: I'm talking about the ones that we're
20 discussing, the two here, I hadn't seen that they denied they
21 were violating the speed law.

22 MR. PACELLA: Your Honor, that's pretty interesting.
23 It's really something that's kind of difficult to determine
24 whether you were speeding at that time at that location.
25 Because there -- you could have -- because of the way they do

1 this procedure where they're not stopping you, you don't
2 know -- if you had someone with you who could be your witness
3 that -- to say, look, I looked at the speedometer and we were
4 going 72 miles an hour or 71 miles per hour. There's no way
5 for you to -- some GPS systems can capture your speed. If
6 someone turns on some traffic lights, you could push a button
7 and capture your speed to have some evidence that you could
8 present to a jury.

9 So actually, Your Honor, the reason why this is so
10 offensive and so procedurally flawed, is that you are deprived
11 of your opportunity to even defend yourself.

12 So to say -- for our clients to --

13 THE COURT: Wait a minute. Wait a minute. How does
14 it deprive you of an opportunity to defend yourself?

15 MR. PACELLA: To gather the evidence that you would
16 have, if -- If you were stopped immediately for speeding by
17 the officer, you would be able to recognize who was around
18 you, maybe talk to the people in your car about that exact
19 moment versus another moment in time or another location. You
20 would be able to use -- if you have a GPS system that allows
21 you to capture your speed, you'd be able to push a button and
22 it could capture your speed, you could bring that into court
23 as part of a trial. There are a number of things that you
24 could do that you're deprived of in this method of traffic
25 enforcement.

1 But more than that, Judge, the officer doesn't write the
2 ticket. That's being done by iTraffic, by the private
3 company. The officer doesn't make the probable cause
4 determination, the officer doesn't even mail the ticket. The
5 mayor testified before a Senate subcommittee that it's mailed
6 by the Town Hall. So he's not even -- the officer's not even
7 trying to serve the ticket by mail.

8 The letter that they send in conjunction with the ticket
9 conflicts. They say different things. One says that won't go
10 on your traffic record, that's the letter; the other says it
11 will. The letter says that, you know, a bench warrant may be
12 issued, they're threatening different kinds of prosecutions
13 that go along --

14 THE COURT: They dismissed all of this.

15 MR. PACELLA: But that doesn't change the fact that
16 there was an unconstitutional arrest at the time they received
17 the ticket. It doesn't change the offensive conduct that took
18 place. And it was dismissed, which essentially is a finding
19 of not guilty.

20 And they have constitutional rights, just like if -- if
21 there is an unconstitutional arrest and someone goes through
22 trial and wants to bring suit, they have that opportunity to
23 bring suit.

24 You know, in this process they also tell people that when
25 they send you a ticket, they have a web site that you can go

1 to, to actually pay your ticket and give you information.

2 That website says that if it's not you, you still have to pay
3 the fine, or you've got to come to court.

4 And we talked about not holding bond forfeitures in open
5 court. There's actually another point that's not in our
6 pleadings, and I am going to recognize that it's not in our
7 pleadings, but I would like to tell the Court that. We do not
8 believe that there's been any jury trials to date, even though
9 the program's been going on since July. And I think that that
10 is sort of a telling situation, in addition to the two people
11 who were dismissed when we went and appeared in court for
12 them, trying to adjudicate their -- have their rights
13 adjudicated by the judge.

14 So to tell you why these two individuals whose tickets
15 were dismissed have rights, well, they have rights because
16 this is an unconstitutional arrest, not a Fourth Amendment
17 violation, so it's a higher standard that we have to show that
18 that arrest shocks the consciousness. But these factors that
19 I point out, think -- even the officer going outside of his
20 jurisdiction alone should be enough to shock the conscience of
21 the Court, but when you combine all of those factors, that
22 becomes a Fourteenth Amendment violation, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. DOMIN: There's no constitutional violation by
25 mailing a ticket. Your Honor, first of all, the Fourth

1 Amendment protects against unreasonable searches and seizures.
2 This is clearly not a search. They want to argue that it is a
3 noncustodial arrest. Respectfully, under federal
4 jurisprudence, mailing a ticket to someone is not a seizure.
5 I mean, first of all, it defies the common sense notion of
6 what a seizure is. We in no way stopped them or detained
7 them. Under federal law, a seizure is determined to be a
8 situation where a reasonable person would believe they're not
9 free to leave. These people leave; there's no -- there's
10 absolutely no reasonable person who would believe that they
11 are not free to leave, simply because a camera took a picture
12 of them.

13 So we don't think that this qualifies as a federal
14 constitutionally-protected Fourth Amendment seizure. It just
15 does not rise to that level. And, in fact, we have cited to
16 you case law that would indicate that providing a ticket to
17 somebody, even if you're going to detain them for some period
18 of time to give them a ticket, is not a seizure. But clearly,
19 mailing a ticket to them would not constitute a Fourth
20 Amendment seizure.

21 Your Honor, they have cited to you three state law cases
22 that say that officers cannot arrest outside their
23 jurisdiction. All of those are Common Pleas offenses --
24 General Sessions offenses, I should say -- for which the
25 person -- the officer actually was outside -- completely

1 outside the jurisdiction, and made an arrest that was, in some
2 situations, based upon conduct that occurred outside the
3 jurisdiction, but, in part, was triggered by conduct that
4 started in their jurisdiction.

5 In the most recent case, the sheriff found that somebody
6 was going into women's houses and stealing women's clothes,
7 and he tracked it back to another county, and a person had a
8 house in another county, and he saw this person pull up and
9 then start throwing women's clothes in the woods. And he
10 effectuated an arrest, because he knew that this was the same
11 fellow who had been stealing clothes back in his county.
12 Again, he effectuated a custodial arrest.

13 In this situation there's no dispute that the offense is
14 committed within the officer's presence. There is an officer
15 in the van when the photographs are being taken, who is able
16 to exercise his discretion and say, that vehicle was not
17 speeding. Or, more likely, we didn't get a clear picture of
18 that vehicle; we can't tell if it's that truck or that car; so
19 we're able to throw that out. The officer there in the van is
20 able to throw that out before it goes any further.

21 The offense itself is committed within the officer's
22 observation and within the Town of Ridgeland, which is within
23 his jurisdiction. So these cases are not similar to those
24 General Sessions cases that the plaintiffs would cite to you.

25 Your Honor, the folks who receive these tickets are not

1 deprived of any -- any right -- any federally-protected right.

2 And I would submit hypothetically, some 15 states have got
3 these traffic camera type programs. If there's some federal
4 constitutional reason why you're not able to mail tickets to
5 people, then they would be illegal in every single state. It
6 wouldn't be any different in South Carolina versus someplace
7 else.

8 If --

9 THE COURT: Just because there's no law and they
10 haven't raised it somewhere else, doesn't mean it can't be
11 raised.

12 MR. DOMIN: Well, I agree with that, Your Honor.
13 But, in these other states the decisions uphold these traffic
14 cameras. And the key -- really what the plaintiffs are
15 complaining about is that state procedural law has been
16 violated. They are contending that state procedural law
17 requires a ticket to be hand served on somebody. That's not a
18 federal requirement. It's not -- there's nowhere in the
19 United States Constitution where it says that a ticket must be
20 handed to you in person as opposed to being mailed to you.

21 If they want to take that issue to State Court for some
22 kind of a state declaratory judgment, or for that matter, if
23 they want to have one of these tickets appealed up to the
24 South Carolina Supreme Court, they can get a decision of that
25 issue. But it's not a federal constitutional issue.

1 And none of these folks have been deprived of any rights.
2 These folks specifically that we were talking about, the folks
3 who appeared and who their cases are dismissed, they received
4 due process, they got the opportunity to appear in court, and
5 the system worked. The system worked because the tickets were
6 dismissed. They could raise any issues they want. And that
7 there were no fines assessed as a result of them, and there
8 were no collateral consequences as a result of these tickets.

9 So we don't think that we've taken away any rights of any
10 defendants, but surely not this category of defendants.
11 They're the ones who got their day in court, and ultimately
12 those tickets were dismissed. Thank you.

13 MR. TEMPLETON: Again, Judge, for the record, I adopt
14 by reference Mr. Domin's arguments completely, I think he
15 captured the essence of the argument.

16 Focusing back, the three points that I would want to leave
17 the Court for its consideration on these, with this class of
18 person, is, first and foremost, the standing issue.

19 The argument that has been made is that there's been a
20 constitutional challenge, in essence, a due process violation.
21 The due process had worked. They had their day in court, they
22 appeared through counsel. And right, wrong or indifferent,
23 the tickets were dismissed. Thus, there's no damage. That's
24 point two, there's no damage here. Every day across America,
25 across this state people are accused of crimes, they have

1 trials, they have hearings, cases get thrown out all the time.
2 The system works. And it worked in this instance.

3 With respect to the three state cases talking about the
4 custodial arrest, that's a huge point. Those were custodial
5 arrests. This is, at best, a noncustodial arrest. So those
6 three cases have no application.

7 Which takes me to my third point. There is no statute in
8 South Carolina that requires that the ticket be served
9 personally. There is no statute that requires it be mailed by
10 certified mailed or some process server. To the contrary,
11 Section 56-7-20 contemplates and uses the word given,
12 G-I-V-I-N-G. Given. E-N, not I-N-G. Given to the offender
13 in the context of the uniform traffic ticket. These tickets
14 were given. They were given vis-a-vis the United States mail
15 service, but there's no language in that statute that requires
16 it be personally given at the time that the ticket is issued.

17 So with respect to the category of folks whose claims or
18 charges were dismissed, there is no constitutional injury
19 here, there's no violation of any constitutional or state
20 protected claim.

21 Thank you.

22 MR. STROM: Your Honor, can I reply to that?

23 THE COURT: Yes, sir.

24 MR. PACELLA: Your Honor, we talked about shocking
25 the conscience of the Court. I mean, let's think about what

1 we have here. We had a camera system that originally was
2 working without the officers in there. And then there was an
3 Attorney General's opinion that said the officer had to
4 participate, so officers start appearing. This thing is fully
5 automated. Somebody comes down the road, the radar apparently
6 goes off, a flash goes off, it takes a picture of the driver,
7 takes a picture of the back of the car so it can get the
8 license tag. All this is computer generated.

9 What we've alleged in our complaint is the officer is
10 sitting there, and he's then watching, I guess. That
11 information is then taken to what I refer to as the girls at
12 City Hall, who are paid for by the private company. And those
13 women go on line to the various Highway Department websites
14 and pull up pictures of the person who owns the car, based on
15 the license tag. And they look at that picture, and they look
16 at the picture of the person that was captured driving the
17 vehicle, and they make some determination as to whether or not
18 this is the right person. I think. We've alleged in our
19 complaint that the officer does not participate in that. And
20 that's where probable cause lies. You've got to determine
21 whether you are charging the right person. And they have
22 delegated that to a staff person. The officer may be in the
23 vehicle, in the van watching it come by and match up the car
24 and the speed and all of that, but he is not, as it is alleged
25 in our complaint, participating in confirming that that was

1 the person driving the car. And then the girls or someone at
2 Town Hall mails these tickets.

3 So, you know, this is a criminal charge, and this is
4 service. And in all the years I've been practicing law, there
5 are rules on how you serve process. And I've never seen
6 process served by regular mail. It's clearly -- and our
7 complaint alleges that these people, these officers and the
8 girls, I mean, so we've got this camera stop, we've got no
9 probable cause determination by a police officer, we've got it
10 mailed out of the jurisdiction.

11 Further shocking, as our complaint alleges, they get a
12 uniform traffic ticket, but they get a separate letter from
13 the police chief who says it -- the ticket says that a bench
14 warrant will be issued. The letter says that if you pay your
15 bond -- and all these are exhibits in the complaint -- that
16 there won't be any points against you. They're inconsistent.

17 And then you're given a court date. And there's no
18 process at the court date. There's no process. There's no
19 determination, there's -- you know, I've been in hundreds of
20 magistrates courts in this state, everybody has a tape
21 recorder and this stuff is read on the record. You've got a
22 city police department, when they forfeit bonds like this, the
23 clerk calls out the names, and the judge, one by one, checks
24 his list. BF, makes a note on the record, BF, BF, BF, on the
25 docket, that bond forfeiture, bond forfeiture, bond

1 forfeiture. No process here.

2 Then they allege that, well, you ought to just go to State
3 Court and deal with this. Well, we had two clients who came
4 to us, not anything particular, we go down there and they
5 dismiss the cases. And as Mr. Pacella has pointed out, I've
6 called some lawyers from that area -- and if you'll allow us
7 to amend the complaint, I was going to ask you to allow us to
8 add this language. I'm told that there are thousands of jury
9 trial requests pending down there. Thousands. Mr. Lord,
10 sitting right here, my co-counsel, has over 500 himself. Do
11 you know how many jury trials they've given people? That
12 would be zero, Your Honor. That would be zero. And I'm told
13 anecdotally from lawyers down there that there's no way for
14 them to try them. Because the population there is 4000
15 people; 2000 of them are in jail, in the jail facility. So
16 they don't have enough jurors to try these cases.

17 So in effect what's happening here is they've -- shocking
18 the conscience -- they've created what I consider the perfect
19 crime. They write these tickets on a local ordinance so there
20 aren't points. People, many of them, don't have the resources
21 to get a lawyer. They're all out of state, because they're
22 going up and down I-95. They get this ticket in the mail, I
23 mean, you know, talking about a class action, this is one
24 of --

25 THE COURT: I thought one of your plaintiffs was from

1 Gaffney or somewhere in South Carolina.

2 MR. PACELLA: Well, one -- they're all outside the
3 jurisdiction of the Town. We excluded that. So I mean, this
4 thing has just -- it is a for profit operation; we've alleged
5 that in our complaint; if we're wrong about that, if they say
6 it's for safety, let's get an expert and let's have a Daubert
7 hearing about that. I don't think that's the case. But we've
8 alleged that. We've alleged that there's no process at the
9 end of the day in a court that complies with any kind of rules
10 to come up with any kind of determination. We want to amend
11 our complaint to allege they're not giving any of these people
12 jury trials that are part of this class.

13 THE COURT: That's an amendment that you haven't even
14 filed yet.

15 MR. STROM: Yes, sir, but we were going to ask. We
16 just learned about this last night, that's right. But those
17 are the issues that shock the -- that should, I hope, shock
18 the conscience of the Court.

19 And the other standing issue here is all of this is
20 repeatable. Everybody that's a plaintiff of ours, no matter
21 which one of these categories you put them in, they're going
22 to ride down I-95 and be subject to the same thing again. So
23 if they're -- you know, we've got other causes of action
24 listed in here, and that's why all of these people continue to
25 have standing just on that narrow issue, no matter which one

1 of the categories you put them in.

2 THE COURT: You take the position they can ride up
3 and down 95 at 85 miles an hour all they want to.

4 MR. STROM: No, sir, I take the position that a
5 police officer has to stop you --

6 THE COURT: I mean, you take --

7 MR. STROM: -- and serve you with a ticket.

8 THE COURT: Right there.

9 MR. STROM: If he's in hot pursue, he can go tree
10 miles outside the jurisdiction. But I take the position they
11 have to serve you with that ticket, and they have to give you
12 a court date. And if you post your bond and you don't show
13 up, they have to have some type of established proceeding.
14 Now, I'm not saying that it has to be a trial in absence, but
15 I think that the law in this state is that there has to be
16 some established proceeding as to how they handle those cases,
17 other than the girls at 8:00 or 9:00 o'clock at night making
18 some note on a docket.

19 And if they can prove at the summary judgment stage that
20 there is a proceeding in place where there is some uniform
21 compliance as to how they handle that -- We allege in our
22 complaint there's not, because we do not believe that's the
23 case, based on what we have seen and heard. If they can
24 establish that, then Your Honor's probably right to grant
25 summary judgment against us.

1 But at this point we've pled, we've pled that there is no
2 process, at the end of the day, where they legally forfeit
3 these bonds. And that's why that first group still has
4 standing. And we've pled that it is illegal to serve somebody
5 out of state or out of your jurisdiction.

6 You know, those are important points. And we think we've
7 established enough facts, alleged enough facts in this
8 complaint to allow us to look into this thing further. You
9 know, we've moved to amend our complaint because we've got a
10 little bit of a Freedom of Information Act. There's a lot
11 more to dig here. And we think, Your Honor, that we've
12 alleged enough here to be able to continue to proceed.

13 THE COURT: Okay. Thank you. Anything more y'all
14 want to add?

15 MR. DOMIN: Mr. Strom covered a lot of territory,
16 went back to the first category.

17 THE COURT: I don't --

18 MR. DOMIN: I don't know if you're inclined to go
19 back to that.

20 THE COURT: No, I don't want to go back.

21 MR. DOMIN: Okay. I didn't want to go back that far
22 either, frankly.

23 You know, as it relates to these folks in the third
24 category, I call them the third category, but it's the folks
25 who actually appeared and whose tickets are dismissed, clearly

1 they not only received due process, they availed themselves of
2 it, the tickets were dismissed.

3 THE COURT: All right, sir.

4 Now we go to the third group who requested a jury trial
5 and are awaiting a jury trial. Let me hear from you about why
6 I should go in and interfere with a State Court proceeding.

7 MR. PACELLA: Well, Your Honor, as you heard from
8 Mr. Strom, there haven't been any jury trials to date, and
9 there may not be any jury trials. These plaintiffs may
10 ultimately fit into the category of the dismissals. But as
11 they presently stand, Your Honor, they're still victims of the
12 same unconstitutional conduct, the same mail fraud, wire --

13 THE COURT: But you want me to go in and interfere
14 with a pending state matter, that they can, if they don't get
15 justice, if they don't feel they get justice in Ridgeland,
16 that they can go up the state ladder, and then when they
17 finish, come here maybe. But you want this Court to interfere
18 with a pending state proceeding. Isn't that what you're
19 asking me?

20 MR. PACELLA: No, Your Honor, actually we do not
21 believe we'll ever have that opportunity and they'll ever let
22 us go through state proceeding.

23 THE COURT: I don't know that, you don't know that.

24 MR. PACELLA: Well, we've been there twice trying to
25 challenge tickets, and they've dismissed them because they

1 didn't want rulings going up. I mean, that is clear, I
2 believe is clear, from the two dismissals that we've gotten.
3 We've actually been down there for a third ticket, which was
4 dismissed because it's not in the complaint.

5 But, Your Honor, they still have claims for -- because
6 they may be subject to the same conduct again, so they still
7 have claims for injunctive relief as they've been harmed by
8 the initial --

9 THE COURT: They can't get relief in State Court?

10 MR. PACELLA: They cannot get -- the municipal judge
11 cannot give them an injunction to prohibit the Town of
12 Ridgeland and iTraffic from having those cameras on the
13 interstate and serving people tickets.

14 THE COURT: Well, there's nobody, no court in the
15 state system can do that?

16 MR. PACELLA: Well, Your Honor, the question of
17 whether this putative class action could have been in State
18 Court is a Class Action Fairness Act question. The reason why
19 this is filed here is because of the Class Action Fairness
20 Act.

21 THE COURT: I mean, but you're asking me to go in and
22 interfere with the State Court proceeding.

23 MR. PACELLA: No, we actually would like those State
24 Court proceedings to go --

25 THE COURT: I'm talking about in these three cases.

1 MR. PACELLA: Yes, Your Honor. We'd actually -- I
2 think the State Court proceeding certainly can go forward.
3 We're not asking you to enjoin those proceedings and not let
4 those proceedings go forward. We're asking to conduct
5 discovery in this case, and move forward to seek relief for
6 the people who we believe are victims of this enterprise that
7 was generated by the Town of Ridgeland and iTraffic, to make
8 money for their town as town profits, and as corporate profits
9 for iTraffic. And they've been harmed much in the same way,
10 they had to go out and hire attorneys to adjudicate what is --
11 to adjudicate their claims in municipal court, and they
12 haven't.

13 THE COURT: Can't they raise all these issues in the
14 State Court?

15 MR. PACELLA: Certainly, Your Honor, they cannot go
16 in and ask the judge for monetary damages for a RICO claim,
17 they can't ask the judge for monetary damages for their
18 constitutional claims, and they can't ask the judge for any
19 monetary damages. All they can do is ask the judge to dismiss
20 the case. And that's the only authority the judge would have
21 is to dismiss the case, if he found it to be a procedural
22 violation. They can't get any other remedies from the court.
23 And they've been waiting for their trials, been waiting a
24 substantial period of time for their trials. The chief
25 justice of the South Carolina Supreme Court issued an order

1 saying that magistrate and municipal offenses need to be tried
2 within 120 days. We've exceeded that. We're still waiting.

3 At some point, if the case doesn't get called for trial,
4 at some point they have to have right to be able to bring
5 their action to adjudicate their rights. At this point they
6 have pending charges over their head. Pending charges that we
7 contend to be unconstitutional, violate constitutional law,
8 that they've been subjected to injury to their person or
9 property because mail fraud and wire fraud acts that are part
10 of the racketeering conspiracy. And because of that, they
11 should be allowed to adjudicate their rights. And how long
12 they should wait for their jury trial? Wait till the statute
13 of limitations expires? Because the statute of limitations
14 for the unconstitutional arrest, is when they received the
15 ticket. That's when it begins the run. Doesn't begin to run
16 upon the dismissal of the case.

17 Because what we're challenging is the conduct that is
18 involved in the mailing. So the only other alternative is to
19 wait and see. And if the town officer never calls the case
20 for trial, then our clients never get a chance to adjudicate
21 their rights. That's not a rational conclusion. They have to
22 be able to adjudicate their rights if they've been injured.
23 And they have been injured, they've hired counsel, we've pled
24 it, they hired counsel to represent them in those proceedings.

25 THE COURT: All right, sir.

1 MR. PACELLA: Thank you.

2 MR. DOMIN: This category of plaintiffs has all of
3 their rights to assert whatever they want in a State Court
4 proceeding. And under Younger and its progeny, this Court
5 should not interfere with any State Court proceedings.

6 Now, I submit respectfully that is exactly what the
7 plaintiffs are asking for you to do. They're asking for you
8 to make determinations that there was an illegal arrest or
9 that there was illegal processing or that there was some
10 misconduct related to the probable cause in issuing the
11 tickets. Those are all questions that can be raised in the
12 court of the Municipal Court of the Town of Ridgeland.
13 There's a judge, and that appeal goes all the way on up to
14 Columbia. They're able to appeal it all the way to the South
15 Carolina Supreme Court, to address any issues that they have
16 regarding all of those issues. All of those issues, they
17 could raise all the way up to Columbia, if they want.

18 Now, they raise a question as to whether or not jury
19 trial -- if a jury trial is never heard, then what is going to
20 be their right. Well, you know, ultimately all defendants
21 have a right to make a motion for a speedy trial, or, in the
22 alternative, to dismiss the case. There's no question that
23 there are a lot of tickets, and there are some backlogs right
24 now. The chief justice, as was just referenced, Chief Justice
25 Toal came out with an order recently applicable to the

1 Magistrates and Municipal Courts, requesting that we dispose
2 of jury trial Municipal and Magistrate Court offenses within
3 120 days. And that's going to be very hard, and cases could
4 have to be dismissed ultimately as a result of that order.
5 And those people will then fall into a different category.
6 But, for the sake of discussion, if we're talking about a
7 category of people who have cases pending right now, this
8 Court should not interfere.

9 MR. TEMPLETON: Ditto. Judge, exactly. *Younger v.*
10 *Harris*, squarely on point for this category. In addition,
11 principles of ripeness are applicable for the Court's
12 consideration, because there's a number of what ifs. You
13 know, what if there's a conviction, what if the jury trial
14 goes forward and there's a conviction, what if there's a jury
15 trial and there's a finding of no fault, no conviction, what
16 if there's a dismissal. All of those things raise question
17 marks as to whether -- putting *Younger* aside -- whether these
18 claims are actually ripe for this Court to consider. As the
19 Court alluded to, perhaps in the future, if the cases
20 matriculate on up to *Columbia*, depending on how things shake
21 out, there may be something in the future. But as it stands
22 here today, these defendants have an opportunity to raise any
23 defense they believe to be necessary and applicable.

24 THE COURT: If they can get a trial.

25 MR. TEMPLETON: If they can get a trial. And if they

1 can't get a trial, Mr. Domin's exactly right, motion for
2 speedy trial, and in the alternative, motion for dismissal.
3 Therefore, they're protected that way, and then they fall into
4 the category of defendants that we talked about before.

5 But I would submit, as I did before, in the event that
6 that occurs, the system worked. Perhaps you could say the
7 system failed because defendants weren't tried in a timely
8 fashion, and, therefore, it's an indictment on the system
9 itself.

10 But what these plaintiffs are asking this Court to do is
11 to declare, because they've asked for a declaratory judgment
12 and injunctive relief, to declare this program is
13 unconstitutional, to declare that the actions of these
14 officers and the Town are unconstitutional, and put a stop to
15 it. That's the nature of an injunctive relief. And with due
16 respect to the plaintiffs, that's not the proper forum.

17 THE COURT: Well, the plaintiff says -- I don't know
18 how many thousand cases pending down there. He said he wants
19 to further amend his complaint. I've forgotten the figures,
20 but he says it's impossible to try all those people, with the
21 population down there. Because the penal institution, which
22 surprised me, I learned about the group in Allendale, they
23 count, for voter purposes, you count the people in these penal
24 institutions. And Ridgeland has got -- I guess Jasper County
25 has a big influx for that reason. Now, if they allege the

1 impossibility of or unlikelihood of being able to try them and
2 them getting some decision, I mean, you're taking the position
3 and I'm not saying it's wrong, that this Court shouldn't
4 interfere. But if this Court were to find that -- and he
5 further amends his complaint, and if this Court were to find
6 that it was impossible, it appeared impossible for these
7 people to get a trial to adjudicate their rights, you don't
8 think that might be conduct that would shock the conscience of
9 the Court?

10 MR. TEMPLETON: It might, Your Honor. At this
11 juncture it's the first I heard of it was today's argument on
12 that issue. No --

13 THE COURT: It's not before the Court, nothing --

14 MR. TEMPLETON: Yes.

15 THE COURT: That's not before the Court now.

16 MR. TEMPLETON: Certainly if Your Honor allowed the
17 amendment to occur, we would look at that and see if there's a
18 legitimate basis to contest it under an argument of futility
19 or not. But as we stand here today, it's not before the
20 Court, and I'm not prepared to fully address those questions.

21 THE COURT: All right, sir. Anything else you want
22 to add?

23 MR. TEMPLETON: No, Your Honor, thank you.

24 THE COURT: Anything you want to add in reply?

25 MR. PACELLA: No, sir, not on this issue.

1 THE COURT: Let's take about a ten- or 15-minute
2 break. Let me think about this.

3 (A recess was held at this time.)

4 THE COURT: I've given this -- gave it a lot of
5 consideration before I came today, and I'd been over the
6 briefs. And I think the law might be different, or some of
7 the law might be different as to the third group. And as to
8 the first two -- first, I don't believe that it's any
9 constitutional violation to send somebody a ticket and give
10 them the information they were given. That would apply to all
11 three groups.

12 Now, I think that the first group, I believe that they
13 violated the traffic laws of the state, and that the state law
14 provides for a person who violates the traffic law and
15 forfeits his bond, I don't think there's any constitutional
16 requirement that you've got to hold a special kind of
17 forfeiture procedure.

18 And I think that the first group, the only way, even if it
19 was a constitutional violation to send them a ticket notice
20 the way they did, they couldn't contest it until having been
21 found -- state law making them guilty, equivalent of a guilty
22 plea. I think until they got that guilty plea set aside, they
23 couldn't come into this court, because I think that the Court
24 would not be -- wouldn't act -- I don't think it's a
25 constitutional violation to start with, but if it were as to

1 the first group, since they were, on the face of the matter,
2 legally pled guilty, I think they'd have to do something to
3 get their guilty plea set aside before they could come into
4 this court.

5 Since I don't feel that there was a constitutional
6 violation, I think the second group, just as their case has
7 been dismissed, and I think that's as far as this court need
8 go with that.

9 Now, the third group, while I don't think there was a
10 constitutional violation, I can see that under some of the
11 statements that have been made, I'm going to allow the
12 plaintiffs 20 days, or however long they want, to further
13 amend the complaint. I could see that -- without giving -- I
14 want to give them a chance. I could see -- I'm not passing on
15 it because it's not before me -- but I could see if they make
16 some allegation, and I'm just using the words that there are
17 4000 cases down there ready to be disposed of, and the
18 impossibility of getting a trial, some allegations like that
19 may create a constitutional violation. I could see those
20 people who couldn't get a trial, and then refuse trials.

21 So I'm going to allow the plaintiff to -- How long do you
22 want? You said you wanted to amend your complaint; how long
23 do you want? I'll give you all the time you want, you just
24 tell me.

25 MR. PACELLA: Your Honor, just ask for 30 days

1 instead of 20 days.

2 THE COURT: All right. Then I'll give y'all 30 days
3 to file any motions you want to file. But I just don't
4 believe that sending -- that there's any constitutional
5 violation that this Court should recognize from the fact that
6 the officer didn't stop them right there and give them a
7 ticket, rather than mailing -- sending the notices out that
8 they send.

9 And insofar as the first group is concerned, before they
10 could challenge that, even if it was, and I don't think it
11 was, but even if it was, since I think they clearly fit the
12 statutory state statute that they violated the traffic laws of
13 the state, and that they forfeited their bond, and that
14 amounts to a plea of guilty, and when you plead guilty, you
15 waive all your constitutional rights. You waive all your
16 rights. So they'd have to get that -- even if it was a
17 constitutional violation, they've waived that, as long as that
18 conviction is standing. So I think that applies to the first
19 group; they've got two hurdles. I mean they had two hurdles.
20 One, was it a constitutional violation, and two, did they
21 violate the state traffic law. And I said I don't think it
22 was a constitutional violation, and second, I think they did
23 violate the state traffic laws, and they had the equivalent of
24 a guilty plea, and that they waived all their rights.

25 As I said, the second group, if it was no constitutional

1 violation, then they've had the charges against them
2 dismissed, and they've reached the end of the rope at the
3 present, as alleged presently.

4 And as to the third group, as the pleadings stand now, I
5 don't see that they've had a constitutional violation any more
6 than the other two. But there may be factors that the
7 plaintiff can allege from the argument, that might change that
8 picture, depending on what is in the complaint. And I think
9 it only fair, since this is not an old case, that the
10 plaintiff be given an opportunity to amend the complaint as to
11 that group. Now, I don't think anybody -- I don't know if
12 there are others who have gone down there and had their
13 complaints dismissed. I believe you did mention one other, I
14 thought you said you appeared one other time and had the
15 complaint dismissed. Didn't you say that?

16 MR. PACELLA: Yes, sir.

17 THE COURT: I thought so. And I don't know, must be
18 hundreds, I guess, who forfeited their bond. And they've got
19 two hurdles to overcome, as I said. Now, they've got the
20 first hurdle of proving it was a constitutional violation,
21 which I don't think it was. But even if they were correct in
22 that, then they've got to overcome my holding that they didn't
23 violate the state traffic law to make that guilty plea -- I
24 mean the forfeiture amount to a guilty plea. Because if the
25 forfeiture amounts to a guilty plea, and then you take the --

1 with a guilty plea, you waive -- or I tell everybody who comes
2 up all the time, if I accept your guilty plea, you waive all
3 your constitutional rights. So even if they had them, they
4 would waive them with a guilty plea. So they've got to
5 overcome that statute, or the statutory law of the state, plus
6 your constitutional violation. Now, I don't think they can do
7 either.

8 And I'll just wait to see as to the third group. I don't
9 think they've alleged a constitutional violation to date. But
10 I don't know what they're going to allege in 30 days. So I'm
11 not going to issue any order any time that's going to confirm
12 in an order what I've stated and the reasons.

13 Now, is there any question, based on what I've said, that
14 any of you have for the Court?

15 MR. PACELLA: Your Honor, just to be clear.

16 THE COURT: If you don't mind, come up here.

17 MR. PACELLA: Yes, sir. Yes, Your Honor, this is
18 more procedural to make sure I understand procedurally. The
19 first three plaintiffs are being dismissed?

20 THE COURT: That's right.

21 MR. PACELLA: The two plaintiffs that had their cases
22 adjudicated and dismissed by the Municipal Court, their motion
23 to be included in the complaint is denied?

24 THE COURT: That's right.

25 MR. PACELLA: Okay. I just wanted to make sure.

1 Because they've never been a party to the action.

2 THE COURT: That's right.

3 MR. PACELLA: Thank you, sir.

4 THE COURT: But the last three, I'm going wait to
5 pass on their claims until I see the amended complaint and the
6 pleadings to that.

7 MR. PACELLA: Yes, sir.

8 THE COURT: Okay. Anything from y'all?

9 MR. DOMIN: No, Your Honor.

10 MR. TEMPLETON: No, Your Honor.

11 THE COURT: We'll be in recess then.

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13 (Court adjourned at 12:36 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the electronically recorded above proceedings, to the best of my ability.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR